IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

SECOND APPEAL NO. 852 OF 2005

Laxman Bharmu Patil .... Petitioner

versus

Smt. Parvatibai Babu Giri Buwa & ors.... Respondent.

Shri G.N. Salunkhe for the petitioner.

CORAM; A.P. DESHPANDE, J.
DATED; 16TH JULY, 2007

P.C.:

1. The present appellant instituted a suit for specific performance of contract on the basis of an agreement dated 7-5-1976. In the said agreement, it is the case of the appellant, that predecessor in title of the respondent had accepted an amount of Rs.1500/- by way of earnest money and the balance amount of Rs.5300/- was to be paid after one year. Holding the said agreement has been proved and by recording the finding on the issue in favour of the appellant/plaintiff, the trial court decreed the suit. Aggreived thereby the respondent no.6 filed a regular first appeal and the first appellate court held that the plaintiff has failed to prove that Babu Buwa agreed the sale of suit land in favour of the plaintiff for a consideration of Rs.6800/-and accepted

the earnest money of Rs.1500/-. To reach this conclusion the first appellate court has relied upon various contradictions in the evidence of P.w.no.1 and the witnesses examined by the plaintiff who happens to be the attesting witnesses. So far as issue no.2 is concerned, the same relates to readiness and willingness of the plaintiff to perform his part of contract. The first appellate court has found that in the evidence of the plaintiff, there is no whisper that the plaintiff at any time after the execution of the agreement dated 7-5-1976 offered the balance amount of consideration to Babu and instructed him to execute the sale deed. The amount was also not offered to the legal representatives of Babu. The agreement did stipulate that the balance amount of consideration shall be paid after one year. Having concluded that at no point of time the plaintiff had offered the amount, the first appellate court has inferred that the plaintiff has failed to establish his readiness and willingness to perform his part of contract.

2. Perused the judgment of the first appellate court. The same does not suffer from any illegality or impropriety warranting any interference in exercise of writ jurisdiction. There is no substantial question of law involved in the second appeal. Hence second

appeal is summarily dismissed.

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